

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of)	
)	
Applications by BellSouth Corporation et al.)	CC Docket No. 02-35
for Authorization to Provide In-Region,)	
InterLATA Services in Georgia and Louisiana)	

COMMENTS OF COVAD COMMUNICATIONS COMPANY

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Covad Communications Company, by its attorneys, hereby respectfully submits its comments in opposition to the application of BellSouth Corp., *et al.*, for authority to enter the in-region, interLATA markets in Georgia and Louisiana. As the Commission is well aware, it has not rejected an application submitted by a Bell Operating Company (BOC) for long distance authority since 1998. In the last four years, the Commission has permitted three of the four Bell companies¹ to treat the section 271 process like a game – filing trial balloons prematurely, withdrawing them, and then refiling a few short days later with the tacit understanding that the application will sail through to approval. BellSouth is trying that gambit here. The Commission cannot permit it.

By these comments, Covad hereby incorporates by reference all of its prior submissions in CC Docket No. 01-277, including comments, reply comments, and all *ex parte* submissions. As set out below, BellSouth has not yet completed the necessary work to bring itself into compliance with the competitive checklist of 271. Although Covad applauds the efforts BellSouth has made in recent weeks, those efforts have not yet paid off with a compliant application.

1. Electronic Ordering of the UDC/IDSL Loop

As Covad noted in its previous filing with the Commission, orders for the UDC/IDSL loop comprise more than 60% of Covad's orders in Georgia and an equally substantial portion of its orders in Louisiana. Covad argued that BellSouth's refusal to provide electronic ordering capabilities on this loop denied Covad a meaningful opportunity to compete. Attempting to defuse the very real competitive harm BellSouth imposes on Covad, BellSouth now makes three equally inaccurate arguments to buttress its unripe application.

¹ Qwest has not yet applied for long distance authority.

First, BellSouth argues that, even though Covad must use manual order processes to obtain access to this loop, BellSouth is provisioning the loop in parity with its retail ISDN service. To reach that conclusion, BellSouth combines intervals for delivery FOCs with its order completion interval. First, the benchmark for returning FOCs on non-mechanized orders in Georgia is 85% within 36 hours. Achieving compliance with that benchmark surely does not equate to providing BellSouth retail customers with instantaneous delivery date information. Moreover, depending on whether BellSouth uses clock hours or business hours (which varies throughout BellSouth's SQM business rules), BellSouth could take as long as three and a half business days to return the FOC without any threat of penalty. For example, BellSouth's Monthly State Summary for Georgia for January indicates only that BellSouth has complied with the enormous 36 hour window for returning a FOC on non-mechanized ISDN loop orders. This FOC window enables Covad's customers to routinely get worse service than BellSouth customers who order an analogous service on the exact same type loop.

Second, BellSouth is obligated to provide access to unbundled network elements in substantially the same time and manner as it does for its retail services. Manual processes are inherently more expensive than electronic processes. For every loop order Covad places manually for a UDC/IDSL loop, Covad pays \$18.94 for a manual service order charge compared to a \$3.50 electronic order charge in Georgia. Thus, before Covad has done more than order the loop, BellSouth charges Covad almost as much as the entire nonrecurring charge for a similar loop in Texas. In addition to those direct, nonrecurring costs, there are numerous additional costs associated with manual processes for Covad employees to type in the information on a LSR, fax it, manually check a variety of websites and databases for order status information, and then input manually that information into the Covad systems. The notion that manual processes

can ever be at parity with electronic ones is ludicrous. If BellSouth actually believes that manual processes enable fair competition, one wonders why BellSouth itself ever mechanized its own retail ordering systems. The answer is clear. To scale a business and efficiently operate in this industry mechanization remains a requirement.

BellSouth blames the lack of mechanization of the UDC/IDSL on Covad. In the Stacy/Varner/Ainsworth Affidavit (¶¶ 193-196), BellSouth erroneously states that the change request seeking electronic ordering of the UDC/IDSL loop was not submitted until November 26, 2001. That misinformation explains why BellSouth continued throughout the fall of 2001 to testify under oath that Covad had not submitted a change request on this loop. In fact, Covad submitted a change request in early August 2001 (attached as Exhibit A) seeking mechanization of this loop. It simply went unnoticed by BellSouth, like so many other CLEC change requests. BellSouth seems to have noticed the change request only when it was referred from the Change Control team to the Flow Through Task Force in November. That referral resulted from pressure in the regulatory arena on the mechanization of this loop. Moreover, Covad and other CLECs should not be forced into the change control process for mechanization of ordering processes for new BellSouth products. BellSouth retail products are not launched until fully functional electronic support systems are already in place. There is no volume requirement on the retail side, and BellSouth's retail group is not subjected to the vagaries of the change control process.

Finally, BellSouth indicates that it is making electronic ordering available on this loop in two phases. The first, introduced on February 2, 2002, will allow CLECs to place orders that will then fall out for manual handling in the LCSC. The second phase will be part of a May 18, 2002 release, just after the statutory deadline for action on this application. Although Covad is heartened that BellSouth has finally mechanized the ordering of this loop, we are concerned

about the way this came about. First, BellSouth described its February 2, 2002 release as “Non-CLEC affecting,” which means that BellSouth was not obligated under Change Control Procedures to notify CLECs in a timely manner or to post the requirements documentation in advance.² As a result, Covad has not yet been able to build its ordering interfaces to support this new process. We are anxious to see whether this new ordering process functions as promised. Since we were given inadequate notice of its development, we cannot report commercial experience on that process at this time. Obviously, BellSouth likewise cannot offer commercial data or test data to prove that it works as reported in comments to this Commission.

In sum, although BellSouth has given Covad the promise of fully flow-through mechanization in the future, the reality of today is that Covad remains bound to a manual process that does not give it a meaningful opportunity to compete.

2. UCL-ND Electronic Ordering

BellSouth claims that it is justified in not developing electronic ordering for the Unbundled Copper Loop - Non-Designed (UCL-ND) because BellSouth claims there have been few orders for this loop.³ Once again, BellSouth seeks to blame the CLECs for its failure to treat them with parity. As Covad described in its initial comments in opposition to BellSouth’s prior applications, this loop type was developed as a result of CLECs desire to have simple, nondesigned xDSL loop -- one that was not provisioned through the Byzantine design process and thus did not incur the enormous nonrecurring charges that BellSouth’s designed loops are famous for. Covad indicated it did not want a designed loop for its services as early as July 2000 in interconnection negotiations, but the product was not released until the end of March 2001.

² BellSouth claims that it placed business rules for electronic ordering of the UDC on its website on January 2, 2002. However, that is not the information necessary to enable Covad to build its interfaces to submit new loop orders. For that, Covad needs the actual requirements to which we must program.

Then, Covad and other carriers were forced to decide whether to purchase this cheaper loop without electronic ordering or stick with the more expensive loop (the ADSL loop) that could be ordered electronically. Covad itself held off ordering this loop while it litigated a series of terms and conditions associated with that loop in the interconnection arbitrations across the region during 2001. As a result of this history, BellSouth comments about this loop are surprising.

First, BellSouth seems to believe that CLECs must order a certain (although undetermined volume) of a loop product before BellSouth can justify mechanization of that product. Notably, such a requirement does not exist on the retail side since retail products are not rolled out until there is a fully mechanized ordering system to accomplish the roll out. If there is a magic number of orders that must be purchased before mechanization is warranted, what is that number and who decides? It appears that only BellSouth has that information. Second, Covad disputes BellSouth's figures about the number of UCL-ND's ordered throughout the region. Covad itself placed over 50 such orders last month. Throughout the 271 process across the region, BellSouth has vociferously argued that it has provisioned hundreds of these loops, a contention contradicted by numerous CLECs who have experienced series provisioning problems with this loop. Perhaps the somewhat low volume can be explained by the CLEC experience in ordering this loop. The repeated failures, process flaws, and provisioning errors made on this loop reflect do not demonstrate that BellSouth is providing access to this network element in such a way as to give Covad a meaningful opportunity to compete.

BellSouth has informed Covad that it intends to include mechanized of the UCL-ND in the May OSS release. Although Covad would certainly welcome this development, the current release schedule in Covad's possession does not confirm that the UCL-ND will be included and

³ As with UDC/IDSL, Covad submitted a change control request for electronic ordering of UDC-ND loops in August 2001. See Exhibit C.

we have no other written confirmation of that plan. Once again, the promise of future mechanization cannot substitute for existing competitive checklist compliance. Unfortunately, according to BellSouth, the OSS release date for this mechanization falls a few days after the statutory deadline for the Commission's decision on this application so that the Commission will be unable to base its decision on existing OSS functionality rather than promises of future developments.

3. UCL-ND Provisioning Problems

In addition to having to order this loop manually, (at an additional charge and with a longer installation interval), Covad continue to experience severe difficulties with getting its UCL-ND orders provisioned correctly. This problem began with a test batch of UCL-ND orders in October 2001 and continues through to the date of this filing. Over the past five months, Covad has provided numerous spreadsheets to BellSouth showing orders that have been improperly provisioned. For example, Covad has a recurring problem with testing on this loop. If Covad wants joint acceptance testing, Covad must pay extra and indicate that the work should be done by placing the testing USOC on the LSR. In our original efforts to trial this loop, Covad ordered loops both with and without testing to compare how successfully BellSouth was provisioning it. Unfortunately, we experienced repeated problems with BellSouth's LCSC failing to put the testing USOC on the orders when we requested it. As a result, testing was not performed. Despite BellSouth's argument to the contrary, that problem remains. Furthermore, Covad continues to experience problems getting BellSouth personnel to follow the BellSouth procedure. BellSouth's process for provisioning this loop provides that, if the loop requires a dispatch, the BellSouth technician will provision the loop, call Covad to close the order and provide demarcation point information, if requested, so that the Covad technician can identify

the loop. On February 18, 2002, Covad sent a list of orders to BellSouth and asked for an explanation of why BellSouth was not following this process. On February 25, 2002, Covad provided BellSouth with another list of over 50 orders for UCL-ND, which similarly experienced difficulties with provisioning or which were not provisioned according to BellSouth process.

The problems Covad experiences range from problems in the LCSC to improper work done in the central office. Covad has informed BellSouth that it has BellSouth technicians calling Covad in confusion about how to provision this loop and what work steps to follow. Conversely, Covad has had difficulty convincing the CWINS center to open trouble tickets to fix problems on these loops because of similar lack of training. Covad has been unable to locate the group that is willing to take responsibility for this product. For BellSouth to claim it is unaware of existing problems with provisioning this loops strains credibility.

4. Lack of Electronic Ordering for Conditioned Loops

Unlike every other BOC in the country, BellSouth does not allow Covad or other CLECs to place orders for conditioned loops electronically. Somehow, BellSouth must believe that it is not obligated to provide the same fully functional processes that other BOCs do before entering the long distance market. Covad has requested that this process be mechanized, as has Sprint. Sprint placed a Change Control Request for this mechanization in April 2001. That request was summarily rejected by BellSouth. Likewise, Sprint's appeal was rejected. Last fall, Covad submitted a change request seeking mechanized ordering of conditioned loops as well as a process for pre-authorization for conditioning to address inaccurate data in BellSouth's loop makeup databases. Covad has experienced increasing problems with inaccuracy of that data. Before placing loop orders, Covad performs electronic loop makeup inquiries to gather information on the length of the loop, presence of load coils and types of facilities (copper/fiber)

to a customer's house. If a loop appears free of load coils, Covad places the loop order. Increasingly, BellSouth later reports that its loop makeup information was incorrect and load coils do exist on a certain loop. As a result, Covad must cancel the original order and resubmit with a request for conditioning. Covad has requested that BellSouth implement a process like Qwest and SBC wherein Covad specifies on a loop order that conditioning be performed if necessary. This would save both Covad and BellSouth time and money. BellSouth is apparently considering this request.

5. BellSouth Change Control Process

Although BellSouth's most recent proposal to improve the Change Control Process are moving in the right direction, the CCP continues to be fatally flawed.⁴ Covad has three primary concerns with the CCP that remain unchanged by the BellSouth proposal. Prior to entry into the long distance market, BellSouth must be required to significantly alter the CCP in areas of prioritization (specifically, what must be prioritized) and capacity/release management.

First, the time period BellSouth takes to achieve the requested changes submitted through Change Management are unacceptable. A BellSouth spreadsheet provided by the Change Management team shows the "top 15 Change Requests" prioritized by the CLECs with the scheduled implementation dates. (Attached as Exhibit B) It is alarming to note that the change requests on this spreadsheet date back to 1999 and 2000. This illustrates the severe problem with BellSouth Change Management. BellSouth continues to 'improve' the Change Management Process Document, however, the implementation of this document by BellSouth does not demonstrate that BellSouth can implement OSS change requests in a timely manner so that the non-discriminatory access is provided. Covad's business plan has been damaged directly

⁴ See CCP Release Schedule, Exhibit D, for an updated implementation release schedule.

by these delays. For example, in July 2000, Covad submitted a Change Request seeking pre-ordering through EDI. Currently, Covad has EDI pre-ordering with every other BOC in the country. BellSouth is the only BOC that does not make this functionality available. That request has been wallowing in the CCP process for almost two years. As a result, Covad has had to design and implement pre-ordering software uniquely for BellSouth's TAG pre-ordering interface.

The second primary concern Covad has with BellSouth's CCP is release capacity. In its latest formulation of a 271 application, BellSouth has offered to "give" the CLECs a certain percentage of the capacity on an annual basis for releases. However, whether the percentage is 40/60 or 50/50, as in the last proposal, no set percentage of release capacity is acceptable if BellSouth does not fully disclose all changes that would result in a 100% release capacity. In other words, CLECs cannot be expected to take BellSouth's word that it has allotted the correct amount of capacity to CLECs. Covad would need to have all the requests on the table so that it can ascertain for itself whether the allocation of release capacity is equal. BellSouth's offer of a release capacity percentage continues to put controls around the CLECs and continues to give BellSouth the authority to completely determine the outcome. Basic capacity information for all changes to be considered for a release must be made available to the CLECs to best manage the multiple requests that vary in capacity size.

Covad third primary concern with the CCP involves the treatment of system defects. Covad believes that system defects should be treated and resolved separately from requests for enhancements. Defects, after all, result from improper or inadequate coding or testing by BellSouth and its software vendors. Defects severely limit the functionality of the existing systems and impact whether BellSouth's OSS complies with the competitive checklist.

Furthermore, BellSouth has a particularly severe backlog of defects and remains unable to resolve defects faster than new defects are identified. BellSouth must establish an immediate process to clean up the defects. Otherwise, the CLEC community will continue to be plagued with work-arounds on software released almost a year ago. Such work-arounds take Covad's employees out of process, and cost Covad time and money identifying the problems, forcing BellSouth to recognize them and driving Bellsouth to implement a manual workaround to address these problems. For example, there are 11 defects in BellSouth's current OSS that directly impact Covad. In the 10.4 OSS release, one of these defects is targeted to be fixed and no others for the year 2002. Moreover, the oldest defect on the list is from April 2001, yet it is not the defect that is scheduled to be corrected. The continuous growth of aged defects must be cleared.

7. Organization Procedures and Personnel Structure

The Stacy/Varner/Ainsworth Affidavit (¶¶151-54) spends an enormous amount of time blaming Covad and other CLECs for not contacting the correct group at BellSouth for assistance with defects, system problems, provisioning problems, or other issues that arise in our business relationship with BellSouth. BellSouth states, "When utilized properly by the CLEC, this BellSouth infrastructure will provide any CLEC with efficient interfaces for the ordering process." (Stacy/Varner/Ainsworth Affidavit ¶152) and "If Covad would contact the right resources in the first instance, repeated referrals could be avoided." (Stacy/Varner/Ainsworth Affidavit ¶153). For BellSouth the simple answer is always the right answer: problems with BellSouth's OSS are Covad's fault. But the reality of placing orders and driving problems to resolution through the Byzantine BellSouth systems does not provide Covad with a meaningful opportunity to compete. The following is one recent example of how Covad was forced to chase

through the BellSouth maze to get BellSouth to correct its own LCSC problem. It also highlights the fundamental flaw in BellSouth's communication between the LCSC, CSM and EC Support.

Covad ordering agents recently realized that on Line Sharing orders the Change (C) order and the Record (R) order were not completing in the correct order. Rather, the R order for billing was completing prior to the physical work to provision Line Sharing, the C order. Basically, this means that BellSouth started billing Covad prior to BellSouth providing the UNE. Moreover, it caused customer dissatisfaction because BellSouth systems reported the work complete before it actually was. Covad brought this problem to the attention of the LCSC. The LCSC, without performing any investigation, immediately stated that it was a system problem. Covad contacted the EC Support group and was advised that this resulted from a “downstream” problem. Covad pursued this for a defect number and fix date, but none was provided. As Covad pushed the problem further, BellSouth finally determined that it was in fact an LCSC problem after all. Apparently, service representatives were not relating the PON numbers on the two orders.

Thus, Covad’s commercial experience shows nothing as simple as Covad was calling the wrong group. Rather, the multitude of groups and lack of shared responsibility for problem resolution seems to entitle BellSouth to pass the buck among the LCSC, CSM and EC. Meanwhile, Covad suffers delays in orders, wasted work time and management efforts to chase down the correct group and force that group to take ownership of resolving a problem. This should be the reverse. When a problem is brought to the LCSC or any customer facing organization, that customer-facing group should receive the problem, take ownership of it and facilitate its resolution. Moreover, BellSouth seems to place all the burden on CLECs to know the underlying basis of the problem. Covad knows only how to place the order. Mechanized

orders may fall out and experience manual problems, or they may experience downstream mechanized problems -- all of this behind the veil on the BellSouth side. All Covad knows is that its has a problem. BellSouth must take responsibility for allocating resources to recognize and resolve such problems.

Another recent experience highlights the failure of BellSouth to adhere to its own stated policies. In repeated examinations and in submissions to this Commission, BellSouth has stated that it does not require Covad to speak to the original BellSouth representative who clarified an order to get an error resolved. BellSouth has stated that erroneous clarifications can be resolved by any service representative at the LCSC. As recently as February 28, 2002, Covad can confirm BellSouth's failure to adhere to this process. On that date, Covad's Operational Manager contact the Birmingham LCSC Manager, Eddie Echols, to discuss the problem of Covad agents being transferred to the original BellSouth Service Representative who clarified an order. According to the BellSouth Manager, the reason for this process was so that BellSouth Service Representatives can learn from his or her original mistake. This means that when Covad receives a clarification on an order that does not make sense or seems to be in error, Covad will call the LCSC. Then, Covad agents may be transferred, put on hold or worse, required to leave a message for the original BellSouth Service Representative so that he or she can call Covad back. All of this effort and time is apparently spent so that the BellSouth Service Representative can learn from his or her mistake. While Covad certainly supports improved training, Covad should not be forced to suffer through these delays so that BellSouth Service Representatives can learn from mistakes. This appears to be one of the situations in which the people testifying in 271 hearings and submitting affidavits to this Commission are not in touch with what is really happening in the LCSC.

8. Exceptions in Florida Demonstrate Lack of Checklist Compliance

As Covad has noted in previous filings, the plethora of open exceptions in the Florida Third Party Test reveals serious and ongoing deficiencies in the BellSouth OSS. The following are a number of exceptions that reveal serious flaws, which together deprive Covad of a meaningful opportunity to compete. Because BellSouth concedes in its application that the OSS on which it relies for proof of checklist compliance as a region-wide OSS, exceptions found in the Florida OSS test are fully applicable in the instant proceeding. Indeed, as Covad argued in the prior round of BellSouth applications, the findings of the Florida OSS test reveal not only problems with BellSouth's OSS, but with the OSS test conducted in Georgia – that test should have uncovered the same problems as were found in Florida.

- Exception 130 -- KPMG went to a variety of central offices in Florida the day after the FOC to determine if all the physical work had been completed. It determined that provisioning work had been completed in only 88.4% of prders. KPMG is currently investigating whether those incomplete orders were counted as misses in the Order Completion Interval metrics. As Covad has previously indicated, such orders appear to be erroneously excluded from the Order Completion Interval calculation. Slower completion intervals directly affect Covad's ability to compete with other DSL providers, including BellSouth, and can negatively impact customer satisfaction with a new service like DSL.
- Exceptions 72, 117-- KPMG found inadequate or no response to faxed orders (BellSouth failed 4 tests). BellSouth's response to these exceptions highlighted its retraining efforts, but after failing re-testing, BellSouth indicated that responses to faxed orders were not really that important because CLECs could get information from the PON status report and CSOTS. From Covad's perspective, these exceptions highlight the failures of manual processes.

Moreover, when Covad does not get timely responses to its faxed orders, Covad systems are triggered to alert a Covad agent to a potential problem. That agent must then make various calls to the LCSC as well as scouring multiple databases for status information. This adds costs to each order making it increasingly difficult for Covad to efficiently get customers into service.

- Exception 103, 110 -- KPMG found that BellSouth had no guidelines for certain LCSC interactions and no process for tracking and resolution of ALEC issues. Although BellSouth contends that LCSC has the capability to log customer contact notes in the local order tracking system which can be viewed by all LCSC service representatives (Stacy/Varner/Ainsworth Affidavit, ¶ 154), KPMG found that system was not functioning. Likewise, it must be noted that the EC Group that handles system related problems has no such tracking mechanization. In Covad's experience, deep and persistent problems reside in BellSouth's inability/unwillingness to track Covad issues to resolution. As a result, resolving problems takes longer for Covad agents because they are forced to explain the problem time and again to different BellSouth personnel.
- Exception 112 -- KPMG found that manual submission of orders creates problems with getting features and service provisioned. This exception directly mirrors the problems Covad had getting UCL-ND orders provisioned with the testing USOC. BellSouth agents simply failed to place the USOC on the order and, as a result, BellSouth technicians did not know they were required to conduct joint acceptance testing. As a result, numerous UCL-ND orders failed and trouble tickets resulted. Ultimately, Covad could not deliver timely service to its customers.

- Exception 116 -- KPMG noted that BellSouth's manual processes failed various volume tests, proving that these processes would be unable to handle high commercial volumes of orders.
- Exception 22,109,124,131,135,36,114, and 120 -- There are eight open exceptions on data integrity issues. In each of these KPMG has been unable to replicate BellSouth reported data. As previous Covad pleadings reveal, Covad has been likewise unable to replicate BellSouth reported data, and Covad has noted that BellSouth improperly "L" coded a significant portion of its orders, creating a downward bias in the Order Completion Interval.

9. BellSouth is Poised to Impose Anti-competitive Pricing on DSL Elements

Although the Georgia Public Service Commission has set reasonable interim rates for DSL elements, BellSouth is poised to significantly increase those rates in an upcoming generic cost proceeding. Relying on a dubious time and motion study (which inherently captures every embedded inefficiency in the BellSouth pre-ordering, ordering and provisioning systems), BellSouth has filed cost studies seeking to dramatically increase costs to CLECs. For example, BellSouth has proposed to charge Covad \$460.03 nonrecurring and \$14.63 recurring (Zone 1) for an ADSL capable loop (even when Covad performs its own loop makeup). For the UDC/IDSL loop, which comprises over 60% of Covad's orders in Georgia, BellSouth's cost studies seek \$558.30 nonrecurring and \$28.48 recurring in Zone 1 (the highest density zone). A quick comparison of these unsupportable rates demonstrates that, if BellSouth's time and motion study is accurate (a large if), BellSouth's proposed rates will make it the least efficient and highest compensated BOC in the country. The ADSL loop that BellSouth seeks to sell for \$460 nonrecurring in Georgia is \$15.03 in Texas, \$36.54 in Illinois, \$28.31 in Massachusetts, \$29.93 in California, and \$37.53 in Washington. Similarly, on the recurring side, BellSouth's proposed

rates range from \$2 (Texas recurring rate is \$12.14) to \$11 (Illinois recurring rate is \$3.72) dollars higher than in comparable BOC territories. BellSouth should not be permitted to gain 271 access on the basis of reasonable, TELRIC compliant DSL rates, only to hike those rates an astronomical amount after it gains access to the long distance markets.

10. Access to Copper Loops After BellSouth Deploys Fiber

In accordance with the *UNE Remand Order*,⁵ the Commission requires incumbent carriers to provide competitors with access to all of the same detailed information about the loop that is available to the incumbents,⁶ and in the same time frame, so that a competing carrier can make an independent judgment at the pre-ordering stage about whether an end user loop is capable of supporting the advanced services equipment the competing carrier intends to install.⁷ Under the *UNE Remand Order*, the relevant inquiry is not whether a BOC's retail arm accesses such underlying information but whether such information exists anywhere in a BOC's back office and can be accessed by any of a BOC's personnel.⁸ Moreover, a BOC may not "filter or digest" the underlying information and may not provide only information that is useful in provisioning of a particular type of xDSL that a BOC offers.⁹ A BOC must also provide loop qualification information based, for example, on an individual address or zip code of the end

⁵ *UNE Remand Order*, 15 FCC Rcd 3696, 3885, para. 426 (determining "that the pre-ordering function includes access to loop qualification information.").

⁶ *See id.* At a minimum, a BOC must provide (1) the composition of the loop material, including both fiber and copper; (2) the existence, location and type of any electronic or other equipment on the loop, including but not limited to, digital loop carrier or other remote concentration devices, feeder/distribution interfaces, bridge taps, load coils, pair-gain devices, disturbers in the same or adjacent binder groups; (3) the loop length, including the length and location of each type of transmission media; (4) the wire gauge(s) of the loop; and (5) the electrical parameters of the loop, which may determine the suitability of the loop for various technologies. *Id.*

⁷ As the Commission has explained in prior proceedings, because characteristics of a loop, such as its length and the presence of various impediments to digital transmission, can hinder certain advanced services technologies, carriers often seek to "pre-qualify" a loop by accessing basic loop makeup information that will assist carriers in ascertaining whether the loop, either with or without the removal of the impediments, can support a particular advanced service. *See id.*, 15 FCC Rcd at 4021, para. 140.

⁸ *UNE Remand Order*, 15 FCC Rcd at 3885-3887, paras. 427-431 (noting that "to the extent such information is not normally provided to the incumbent's retail personnel, but can be obtained by contacting back

users in a particular wire center, NXX code or on any other basis that the BOC provides such information to itself. Moreover, a BOC must also provide access for competing carriers to the loop qualifying information that the BOC can itself access manually or electronically. Finally, a BOC must provide access to loop qualification information to competitors within the same time intervals it is provided to the BOC's retail operations or its advanced services affiliate.¹⁰

For quite some time, Covad has been disturbed by the apparent unavailability of spare copper in the BellSouth network. Because of the high percentage of loops served over fiber facilities in the BellSouth region, Covad has a high rate of orders that it must cancel before they are even submitted to BellSouth, based on the loop makeup information made available to Covad. Over the summer of 2001, Covad asked BellSouth to explain what it does with loop makeup information on copper loops when it replaces those loops with fiber facilities. If BellSouth does not remove that copper from the ground (which it does not), Covad is entitled to use those loops for its service. However, if BellSouth takes those loops out of LFACS, so that Covad cannot learn that the spare copper is available, then Covad cannot order those loops.

The history of the issue is quite simple. Covad provides DSL service nationwide in every BOC region. Although every BOC is deploying fiber, a large number of Covad's orders in Georgia from its ISP partners must be cancelled before they are even submitted to BellSouth as a result of information that only fiber serves a particular potential Covad customer and no copper is available to that address. This problem is particularly acute for line sharing orders. More than half of those cancellations results from deployment of fiber and Covad's inability to obtain spare copper to those customer locations. Line shared loops are the primary means by which Covad

office personnel, it must be provided to requesting carriers within the same time frame that any incumbent personnel are able to obtain such information.”).

⁹ See *SWBT Kansas Oklahoma Order* at para. 121.

¹⁰ *Id.*

provides residential DSL services in Georgia. Because Covad remains committed to growing its business in Georgia, Covad has been examining the reasons that Covad orders are cancelled and what it can do to decrease those cancellation numbers. To Covad, cancellations mean that a customer chose Covad or one of its Internet Service Provider (“ISP”) partners for DSL service over BellSouth. When those orders must eventually be cancelled, both Covad and the customer lose out.

During the Line Splitting Collaborative, Covad and AT&T worked to select several AT&T employees in Georgia for use in the Line Splitting trial that will soon commence. Numerous employees out of a single office were qualified, but then BellSouth indicated that those loops would soon be moved to fiber and the copper would no longer be available. This raised a concern at Covad that somehow copper facilities which are in place and remain in place were taken out of the running for DSL service because BellSouth removed them from LFACS. There are two possible reasons for that: (1) unlike other BOCs, BellSouth removes copper facilities from LFACS after the POTS service is “thrown” to fiber; or (2) BellSouth disconnects copper and subsequently removes those facilities from LFACS more frequently than other BOCs.

Unfortunately, BellSouth remains the one party with complete information about what its process is and Covad has an extremely difficult time discovering accurate information that is crucial to helping grow business in Georgia and Louisiana. Covad knows that when BellSouth performs a cable “throw,” moving service from copper facilities to new fiber facilities, BellSouth does not remove the copper that is in the ground. Covad has an right to qualify, select and order any copper facility going to a customer’s premise. The question is what copper facilities are left connected (and listed in LFACS) after a cable “throw” to fiber.

BellSouth responded to Covad's inquiry on this question as follows, "In certain instances, although not "removed from LFACS, copper facilities that have been made spare because the working service has been "thrown" to DLC may not appear in LFACS in the terminal serving the end user because the facilities cannot be used to provide service without engineering and construction work." BellSouth admitted to Covad that, in certain circumstances, BellSouth will replace a copper feeder cable with fiber and splice into the existing cable. In those instances, BellSouth indicates that Covad would not be able to find the loop in LFACS and would not be able to order that loop for service without conducting a manual loop makeup, service inquiry, and incurring engineering and construction fees. Needless to say, Covad has worked long and hard to force BellSouth to develop electronic loop makeup systems and to remove the expensive service inquiry and engineering processes from DSL loops. As BellSouth well knows, Covad has no desire to return to loops that cost thousands of dollars each, nor does Covad have the resources to incur those costs for a single customer.

If BellSouth chose to put in place anti-competitive procedures, BellSouth could decide to cut every feeder cable every time it deployed fiber. That would effectively lock Covad out of entire neighborhoods and would deprive those residents of competitive DSL services. It appears BellSouth believes it has the right to decide when competition will or will not be available in certain areas. When SBC deploys fiber, SBC keeps in place and connected the copper loop network. Covad and other CLECs are able to order using the existing copper loop network for DSL or the copper sub-loop can be moved over to the new Pronto NGDLC. Additionally, Ameritech has an electronically accessible database called ARES that houses information on every loop, irrespective of whether it is fiber or copper. Use of this database in conjunction with use of LFACS ensures that CLECs have access to all loops. SBC provides Covad with two

viable options for providing DSL, either over an all-copper loop or through NGDLC. BellSouth may have concluded that the manner in which it maintains its LFACS database is substantially similar to the way Ameritech maintains its database, but the decisions made about whether to leave copper loop facilities connected or not undoubtedly creates different results. The bottom line is that Covad is able to locate, qualify and order more spare copper facilities in SBC's territory than it can in BellSouth's. BellSouth is essentially denying Covad meaningful access to spare copper where it exists in the network.

Although that problem first arose last summer, it has recently been resurrected. Covad was recently informed that a central office in Florida would no longer be available for copper loops because fiber was being deployed. Upon investigation, it became clear that it was not the entire central office, but only one set of customers that would become unavailable to Covad. In any event, it appears that every time BellSouth now deploys fiber it removes the copper loops, not from the ground, but from LFACS. In that way, BellSouth deprives Covad of access to those loops and those customers. The Commission should inquire into this practice and require BellSouth to comply with section 251(c)(3) of the Act and make its entire copper loop plant available to CLECs.

Conclusion

For the reasons stated herein, the Commission should reject the applications of BellSouth for authority to provide in-region, interLATA services in Georgia and Louisiana.

Respectfully submitted,

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